

June 26, 2008

2008 Legislative Amendments to the Indiana Uniform Consumer Credit Code (“UCCC”) - Effective July 1, 2008

Consumer Sales, Leases and Loans - Questions, Answers, and Administrative Interpretations

1. How have the rules of construction relating to the interpretation of the UCCC been changed to aid the director (“Director”) of the Department of Financial Institutions (the “Department” or “DFI”) in the administration of the UCCC?

Answer – The rules of construction governing the interpretation of the UCCC have been amended to allow the director to exercise discretion in determining whether a transaction is subject to the UCCC, particularly if it is, in the director’s opinion, a disguised consumer credit transaction. With respect to the director’s determination, the language has been clarified to point out that the parties have administrative remedies available to appeal the determination. [IC 24-4.5-1-102(5)]

2. Do the provisions of UCCC apply to an agent or other person acting on behalf of an out-of-state or Internet consumer credit sellers, lessors and lenders who solicit consumer loans, leases or loans with Indiana residents?

Answer – Yes, in 2007, the territorial application section of the UCCC was amended to require consumer credit sellers, lessors and lenders who are regularly engaged in the extension of consumer credit to comply with the UCCC if they solicit consumer sales, leases or loans with Indiana residents. In 2008, the territorial application was again amended to clarify that it also applies to “a person acting on behalf of the creditor.” Therefore, compliance with the territorial application provisions must occur if a solicitation is made in Indiana directly by creditor or someone acting on behalf of the creditor. [IC 24-4.5-1-201 (d)]

3. Does the UCCC apply to a consumer transaction which is secured by a lien on real property located outside of Indiana?

Answer – No, the territorial application provision has been amended to clarify that the UCCC does not apply to a consumer transaction which is secured by an interest in land located outside Indiana. [IC 24-4.5-1-201(1)(e)]

4. What will be different in obtaining a license to make consumer loans under the UCCC?

Answer – For new licenses and renewals for consumer loans after January 1, 2009, the DFI will be using the Nationwide Mortgage Licensing System (“NMLS”), which has been developed by

the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This licensing system is web-based and will allow consumer lenders to apply for, amend, update or renew their licenses using uniform forms from participating state agencies throughout the United States. [I.C. 24-4.5-3-502] Specific details of how to use the NMLS will be provided later on the Department website.

5. Have the criteria changed for granting a license to make consumer loans under the UCCC?

Answer – Effective July 1, 2008, the Department will determine the financial responsibility, character, and fitness of not only the applicant but also the following persons or entities associated with the applicant:

- (a) any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant. [IC 24-4.5-3-503 (2)]

6. What is evidence of compliance with the financial responsibility, character and fitness requirements of an applicant or one of the individuals described to in Item 5, above?

Answer – In addition to other background checks considered necessary by the Director, each of the individuals described in Item 5, above, will have their credit histories reviewed and officers will be required to undergo a national criminal history background check (as defined in IC 10-13-3-12) maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. [IC 24-4.5-3-503 (4)]

7. Do fingerprints have to be submitted for any individuals described in Item 5?

Answer – Yes, officers described in Item 5, above, will be required to submit fingerprints to the Department for processing by the Indiana State Police Department. The individuals submitting their fingerprints are responsible to pay any fees or costs associated with preparing the fingerprints and obtaining the criminal background check. [IC 24-4.5-3-503 (4)] More information on the fingerprinting process will be available on the DFI website.

8. How do I obtain a national criminal background check and what does it cost?

Answer – The Indiana State Police Department is working with the DFI and other agencies to establish a system that will allow national criminal history background checks to be performed electronically by the State Police, thereby eliminating the need to submit fingerprints on paper forms. Until such a system is operational (expected in January 2009), officers described in Item 5, above, must obtain a fingerprint card and instructions from the DFI, and be fingerprinted by their local law enforcement authority. The fingerprint card will then be submitted to the DFI by the law enforcement agency, and forwarded by the DFI to the State Police.

9. What changes have been made to the recordkeeping provisions of the UCCC?

Answer – New § 30.5 has been added to IC 28-1-2 addressing recordkeeping security issues. These recordkeeping requirements apply to the following individuals and entities:

- (a) depository and non-depository financial institutions under Title 28,
- (b) consumer creditor licensees and registrants under the UCCC,
- (c) rent to own companies under IC 24-7 and
- (d) other persons subject to the regulation of the Department under Title 28.

The provisions define such terms as “personal information” (i.e. names, addresses, social security numbers, credit card numbers, etc.) and “personal records” (i.e. any paper or electronic records with unencrypted, unredacted personal information of customers or potential customers). The security provisions require that personal records be reasonably safeguarded from destruction, theft or other loss and protected from misuse. If a breach of the security of any personal records occurs, the person maintaining the records is subject to the disclosure requirements under IC 24-4.9-3 (law requiring database owners to disclose security breaches, unless the person is exempt from the disclosure requirements under IC 24-4.9-3-4 (i.e. the database owner is subject to other information security laws)).

10. Do I have to maintain documentation relating to credit insurance or other additional charges (as described in IC 24-4.5-2-202 and 24-4.5-3-202) if I did not originate the contract?

Answer – The language in IC 24-4.5-4-108 (4) requires consumer credit sellers and lenders who acquire consumer credit sales or loan contracts or leases to provide information the DFI needs in order to conduct its examinations. Even though the creditor did not originate the contract, it is required to maintain the information for later examination by the DFI.